1951

File No. O. Shops and Estt./51

Legal Dept.

A **BRANCH**

Subject:—

Opinions under the Bombay Shops and Establishments Act, 1948

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C O N T E N T S.

Legal Department. Shops and Establishment /51.

Sr. No.	R.I./C.Rp.	Subject.	Pages.
		Bom. Shops and Establishments Act, 1948.	
1.	Lab. & Housing Dept. G.F.No. 1938/48. dt. 13-1-51.	Prosecution - Shri Kachardas Revachand-	1-2. (not copied)
2.	" Dt. 13-1-51.	" " Shri Radhakisan Navalmal -	3-4. (not Copied).
3.	" dt. 31-1-51.	" " Shri P.S. Bhatia	5-6. (not copied)
4.	" " "	" " Shri Laljiram Darrin-	7-8. (not copied)
5.	" " "	" " Shri C.L. Anand.	9-10. (not copied)
6.	" dt. 7-2-51.	" " Shri N.B. Kriplani.	11-12. (not copied.)
7.	" Feb. 51.	" " Shri Visvanath Chanda.	13-14. (not Copied)
8.	" 12-2-51.	" " Shri Narsinha.	15-16. (not copied)
9.	" "	" " Shri Mahadu Hariba.	17-18. (not copied.)
10.	" "	" " Shri Amarnath Suri.	19-20. (not copied).
11.	" dt. 30-3-51.	" " Shri Kishanlal Gokulchand	21-22. (not copied).
12.	" "	" " Shri Asraf - Allauddin	23-24. (not copied).
13.	" "	" " Shri Bhikamchand	25-26. (not copied.)
14-	" "	" " Shri Kisanlal Gokulchand	27-30. (not copied).
15.	" dt. 3-4-51.	" " Shri Motichand Belaram	31-32.

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Sr. No.	R.I./C.No.	Subject.	Pages.
16.	Lab. & Housing Deptt.	Prosecution	
	" dt. 6-4-51.	" " Shri D.P. Chulal	33-34. (not copied).
17.	" dt. 10-4-51.	" " Shri.Fukhraj Hirachand	35-36. (not copied).
18.	" dt. 10-4-51.	" " Shri Fidalli Taiballi	37-38. (not copied).
19.	" " "	" " Shri Hasham Kasam.	39-40. (not copied).
20.	" " "	" " Shri Sagarmal Ratanchand	41-42. (not copied).
21.	" " "	" " Shri Jagannath Chandaamal	43-44. (not copied).
22.	24128 7-12-50. 469 8-1-51.	Whether sec. 27(2) of the Bom. Dis. Mun. Act 1901 can be involved for the purpose of sanctioning prosecutions under sec. 60 (1) by a Managing Committee.	45-48.
23.	--- 7825 17-5-51.	Whether under the provisions of the Act, it would be feasible to declare the Principal Medical and Health Officer of the G.I.P. Rly. as a local authority.	49-52.
24.	23945 5-12-50. 8801 5-6-51.	Sec. 49(a) - whether power to enter under - would cover, power to open, whetner the shop is merely chained from outside or is under lock and key.	53-56.

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Sr. No.	F. I./C. No.		Subject.	Pages.
25.	15703 28-7-51.	12376 2-8-51.	Sec. 26.- Whether it overrides rule 50 of the Rules for licensing and controlling Theatres and otherplaces of Public Amusement in Mofussil. Whether it would apply to the dramas staged in open ground or staged on ~~ground~~. annual day by school or college boys in their institutions	57-62.

L.D.R.I.No. 24128 dt. 7-12-1950:

Submitted with reference to L.& H.D. note at page 25 ante.

2. By G.L. dated 14th October 1950, Government have directed that the power to enforce the provisions of the Bombay shops and Establishment Act, 1948 provided for under section 43 is distinct from the power to sanction prosecution under section 60(1) of the Act and that the power to sanction prosecution cannot be legally delegated by a local authority to any of its executive officers and must be exercised only by the local authority. The President, Dohad Municipality, observes that under section 27(2) of the Bombay District Municipal Act, 1901 a managing Committee can exercise all the powers of a Municipality except those mentioned in the said section, such a Committee can also exercise the power of the Municipality of sanctioning prosecutions under section 60(1) of the Bombay Shops and Establishment Act, 1948. The Municipal Commissioner, Ahmedabad, Municipal Corporation, has forwarded a copy of the judgment of the Bombay High Court in criminal application No. 436 of 1944 and wants to know whether in view of the judgment the delegation of the power to sanction prosecution under 1st proviso to section 43 of the new Act is legal. Labour and Housing Department is of the view that section 27(2) of the Bombay District Municipal Act, 1901 cannot be invoked for the purpose of sanctioning prosecutions under section 60 (1) of the B.S.& E.Act by a managing Committeee and that the judgment of the High Court in Criminal application No. 436 of 1944 would not make any difference in the ruling given in G.L. dated the 14th October 1950. R.L.A. however has been requested to advise in the mahter.

N.V.D.
27/6

Office of the R.L.A.

The Bombay Shops and Establishments Act, 1948.

This question has been canvassed by us in an appeal recently filed. It appears that as the Land now stands sanction will have to be accorded by the Local Authority, and if the High Court confirms this view, we may have to introduce suitable amendment to allow the Local Authority to delegate this power. We may await the result of the appeal.

Sd/-

Remembrancer of Legal Affairs.

U.R. to L. & H.D.No. 469. dated the 8th January 1951.

N.V.D.
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4c.

Legal Department.

The question referred to the Remembrancer of Legal Affairs for consideration is whether under the provisions of the Bombay Shops and Establishments Act, 1948, it would be feasible to declare the Principal Medical and Health officer of the G. I. P. Railway as a local authority for the purposes of enforcement of, and inspection under, that Act.

2. Section 43 of the Bombay Shops and Establishments Act, 1948 provides that it shall be the duty of every local authority to enforce within the area subject to its jurisdiction, the provisions of the Act subject to such supervision of the State Government as may be prescribed. The first proviso to that section empowers the local authority to direct that the duty of enforcement of the provisions of the Act shall be discharged by its Chief Executive Officer or any other officer subordinate to it. The second proviso lays down that in respect of the areas not subject to the jurisdiction of any local authority it shall be the duty of the State Government to enforce the said provisions. The expression 'local authority' as defined in section 2(15) of the Act means a municipality constituted under the Bombay Municipal Corporation Act, 1888, the Bombay Municipal Corporation Act, 1901, or the Bombay Municipal Boroughs Act, 1925, or a local board constituted under the Bombay Local Boards Act, 1923. Thus the

local authorities referred to in section 43 are restricted to municipalities and local boards. There is no provision in the Act empowering the Government to include any other institutions, authorities or persons within the scope of local authorities. The propcsal made by the General Manager, G.T.P. Railway, would not therefore be legally feasible. The view taken by Secretary, Labour and Housing Department is correct.

Sd/-

Additional Secretary to Government.

U.O.to L.& H.D. No. 7825, dated the 17th May 1951.

N.V.D.
2766
4 c.

L.D.P.I.No. 23943 dated 5-12-50.

Submitted with reference to the note of the Labour and Housing Department at p.5 ante.

The question Referred for the opinion of the F.L.A. is whether the Shop Inspector can enter to inspect a shop which is closed out-side with chain only (not under lock and key) when there is sufficient suspicion.

The question invloved in this reference is purely legal.

N.V.D.
27/6
4c.

Legal Department.

Power to enter under section 49 (a) of the Bombay Shops and Establishments Act, 1948, would not cover power to open, whether the shop is merely chained from outside or is under lock and key. Power to open pre-supposes power to use force, and wherever such power is intended to be conferred express provisions to that effect is made inthe Act.

Sd/-

Additional Secretary to Government.

U.R. to L.& H.D. No. 8801, dated the 5th June 1951.

N.V.D.
27/6
4c.

p.11 ante.

In his note dated 25-7-1951, the Secretary, Labour and Housing Deptt. requests P.L.A. to advise whether the view expressed therein is correct. The questions for consideration are:-

(1) Whether Sect. 26 of the Bombay Shops and Establishments Act, 1948, overrides rule 50 of the Rules for Licensing and Controlling Theatres and other places of Public Amusement in Mofussil; and

(2) Whether sect. 26 of the Act would apply to the dramas staged in open ground or staged on annual day by school or college boys in their institutions.

2. Sect. 26 of the Bombay Shops and Establishments Act, 1948, provides thus:-

"Notwithstanding anything contained in any other enactment for the time being in force, no theatre or other place of public amusement or entertainment shall, on any day, be closed later than twelve midnight."

The word "enactment" as defined incl. (17) of sect. 3 of the Bombay General Clauses Act, 1904, includes any Regulation of the Bombay Code and shall also include any Provision contained in any Act or in any such Regulation as aforesaid. It uses the expression "shall mean" and as the definition is extensive, it does not take away its ordinary meaning (See pp.192-193 of Craies on Interpretation of Statutes). In Webster's dictionary, the term is defined to mean "act of enacting or state of being enacted; the giving of legislative sanctions and executive approval whereby a Bill becomes an Act or law; a law; statute" Though most, if not all, statutory rules may be regarded as forming part of the general law,

and as being legislative or executive acts, although they are acts of a subordinate and delegated authority", (See p. 264 of Praies on Statute Law), it is doubtful whether rule 50 of he Rules for Licensing and Controlling Theatres and other places of Public Amesement in mofussil can be deemed to be "enactment" within themeaing of sec. 3(17) of the Bombay General Clauses Act, 1904. However "where an Act passed subsequently to the making of rules is inconsistent with them, the Act must prevail unless it was so clearly passed alio intuitu that the two may allowed to stand together" (p. 269 of Craies on Statute Law). Even on the ground that the Bombay Shops and Establishments Act, 1948, is a special Act, "relating to the regulation of conditions of work and employment in shops, commercial establishments, theatres and other places of public amusement or entertainment etc." the provisions of sect. 26 of the Bombay Shops ans Establishments Act may be impliedly held to repeal theprovisions of rule 50 which are really repugnant to the said provisions. As the provisions of rule 50 cannot be reconciled with the provisions of sect. 26 of the Bombay Shops and Establishments Act, 1926, which is a special Act, they are repugnant to that extent and consequently, they should be deemed to have been overriden by sect. 26 of the Act. The view expressed by the Secretary, L.& H.Deptt. is correct.

4. As regards the second question , the term "theatre" as defined incl. (29) of sect. 2 of the Bombay Shops & Establishments Act, includes any premises intended principally or wholly for the exhibition of pictures or other optical effects by means of cinematograph or other suitable apparatus or for dramatic performances or for any other kkk public amusement

or entertainment. The words "principally or wholly" connote that the premises should be primarily or chiefly intended to be used for exhibition of pictures or for dramatic performances or for any other public amusement or entertainment. The school and college premises cannot be said to be intended to be used for the purpose of exhibition or dramatic performances or for any other public amusement or entertainment. Nor can the open ground at Marine Drive be deemed to have been xx reserved for any such purpose. Consequently, as the performanxce of dramas in open ground at Marine Drive or in School or College is not held in any "theatre" within the meaing of sec. 2(29) of the Act, the provisions of sec. 26 of the Act would not be attracted. The view expressed by Secretary L. & H. Deptt. in para. 2 of xxx his note is correct.

N.V.D.
27/6
4c.

Legal Department.

Seen and returned.

The view taken by the Secretary, Labour and Housing Deptt. is correct.

Sd/-

Additional Secretary to Government.

U.P. to L.& H.D. No. 12376. dated the 2nd August 1951.

N.V.D.
26
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